

Clause 4.6 Variation Request – Height of Buildings

Crown Development Application for Iglu Student Accommodation at UNSW

UNSW Western Car Park, 215B Anzac Parade, Kensington
Randwick City Council



Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.



We pay our respects to their Elders past, present and emerging.

'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmic connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Contact	Michael Oliver Director	moliver@ethosurban.com (02) 9956 6962	
This document has been prepared by:	This document has been reviewed by:		
			
Jethro Yuen	08/07/2024	Michael Oliver 08/07/2024	
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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of the University of New South Wales (UNSW). It is submitted to Randwick City Council (the Council) in support of a development application (DA) Council for campus student accommodation, university and local retail development operated by Iglu at UNSW Western Car Park, 215B Anzac Parade, Kensington.

The proposed development seeks approval for:

- Construction and use of five buildings with a total gross floor area (GFA) of 27,725m² and 881 student accommodation rooms (with a total of 953 beds), comprising:
 - Building A (southern building)
 - 3 storey podium containing ground floor retail, student accommodation communal space, university space.
 - 16 storey building (including plant floor) containing 454 student accommodation rooms.
 - Landscaped roof terraces at Level 1, Level 2 and Level 15.
 - Height of 56.25m.
 - 502 beds within 454 rooms.
 - Building B (northern building)
 - 2 storey podium containing ground floor retail, student accommodation communal space.
 - 15 storey building (including plant floor) containing 284 student accommodation rooms.
 - Landscaped roof terraces at Levels 1 and 2.
 - Height of 49.2m.
 - 308 beds within 284 rooms.
 - Building C (Anzac Pde frontage)
 - 7 storey building containing 63 student accommodation rooms, communal space and external communal terraces.
 - Ground floor retail space.
 - Height of 24.7m.
 - 63 beds within 63 rooms.
 - Building D (north-western perimeter)
 - 4 storey building containing 33 rooms, communal space and external communal terraces.
 - Height of 12.9m.
 - 33 beds within 33 rooms.
 - Building E (south-western perimeter)
 - 4 storey building containing 47 rooms, communal space and external communal terraces.
 - Height of 12.9m.
 - 47 beds within 47 rooms.
- Landscaping including a network of new connected landscaped public spaces across the ground plane including a new public plaza, pedestrian laneways and shared spaces.
- Excavation to a depth of RL 19.90m for the construction of two new basement levels, each split into an upper and lower level (no change proposed in amended proposal), providing:
 - 220 car functional parking spaces to replace the existing spaces within the UNSW Western Car Park.
 - 25 car parking spaces for Iglu staff.
 - 5 car parking spaces for retail.
 - Loading bays for service vehicles.
 - Bicycle parking and end of trip facilities.
 - Servicing, waste and plant rooms.
- Repurposing of the existing vehicular access off Day Avenue to provide a new ramp to the basement car park and adjustments to the access provisions for the UNSW Regiment site.

Clause 4.6 of the *Randwick Local Environmental Plan 2012* (Randwick LEP 2012) enables Randwick City Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard for height of buildings under clause 4.3 of the Randwick LEP 2012 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated January 2023 and Response to Request for Information dated April 2024, including supporting documentation.

This clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard, the proposed development:

- Achieves the objectives of clause 4.3 of the Randwick LEP 2012 in that:
 - The minor height variation does not materially affect the development's compatibility with the desired future character of the Anzac Parade streetscape as it maintains a 24m street wall height and continues to provide a height transition to the west.
 - The lift overruns and slight roof pitch (of Buildings D and E) are imperceptible from ground level and, therefore do not result in any additional visual bulk, and do not create additional overshadowing or privacy impacts.
 - The encroachment of Buildings A and B from the area of the site to which no building height development standard applies into the zone to which the 24m street wall height applies is minor in nature, will not be perceptible compared to wholly compliant buildings, is compatible in size and scale with the desired future character of the Anzac Parade corridor locality, and will not result in adverse impacts on adjoining or neighbouring land.
- Is compatible with the desired future character of the Anzac Parade streetscape as it maintains a 24m street wall height and continues to provide a height transition to the west.
- Will result in an appropriate built form, scale and massing outcome.
- Is consistent with the relevant objects of the EP&A Act, promoting the orderly and efficient use of land.
- Is consistent with the objectives of the SP2 Infrastructure zone in that it facilitates the provision of much needed student accommodation and does not adversely affect the amenity of nearby and adjoining development.
- Will address the growing need and demand for student accommodation for students, especially given the growth in the international tertiary education sector, which is the largest export service industry in NSW.
- Will provide 953 student accommodation beds to contribute to diverse housing for students in a health and education precinct.
- Will maximise the value of investment in the CBD & South-East Light rail through its integration with new student housing and education.
- Is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the Site.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Randwick LEP 2012.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the Randwick LEP 2012. Under the LEP, the site is mapped as having a maximum building height of:

- 24m along primary frontage for a distance of 30m from the boundary
- 12m along the rear frontage for a distance of 30m from the boundary

Clause 4.3 of the Randwick LEP 2012 is reproduced below in its entirety and an extract from the Height of Buildings Map (sheet 002), to which this clause applies, is shown at **Figure 1**.

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
- (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
- (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.



Figure 1 Randwick LEP 2012 Height of Buildings Map Sheet 002 (site outlined in red)

Source: Randwick LEP 2012

Variations to the height of buildings development standard are proposed for Building A, B, C, D and E. These variations are minor in nature and detailed below.

Building C, located along the Anzac Parade frontage, has a proposed maximum height of 24.7m, which represents a 0.7m variation (2.9% variation) to the 24m height of buildings development standard that applies along the primary frontage of the site for a distance of 30m from the boundary. Importantly, the parapet of Building C complies with the 24m height limit. The lift overrun, which has a proposed height of 24.7m, is the only element of Building C which exceeds the 24m height of buildings development standard. This is illustrated in **Figure 2**.

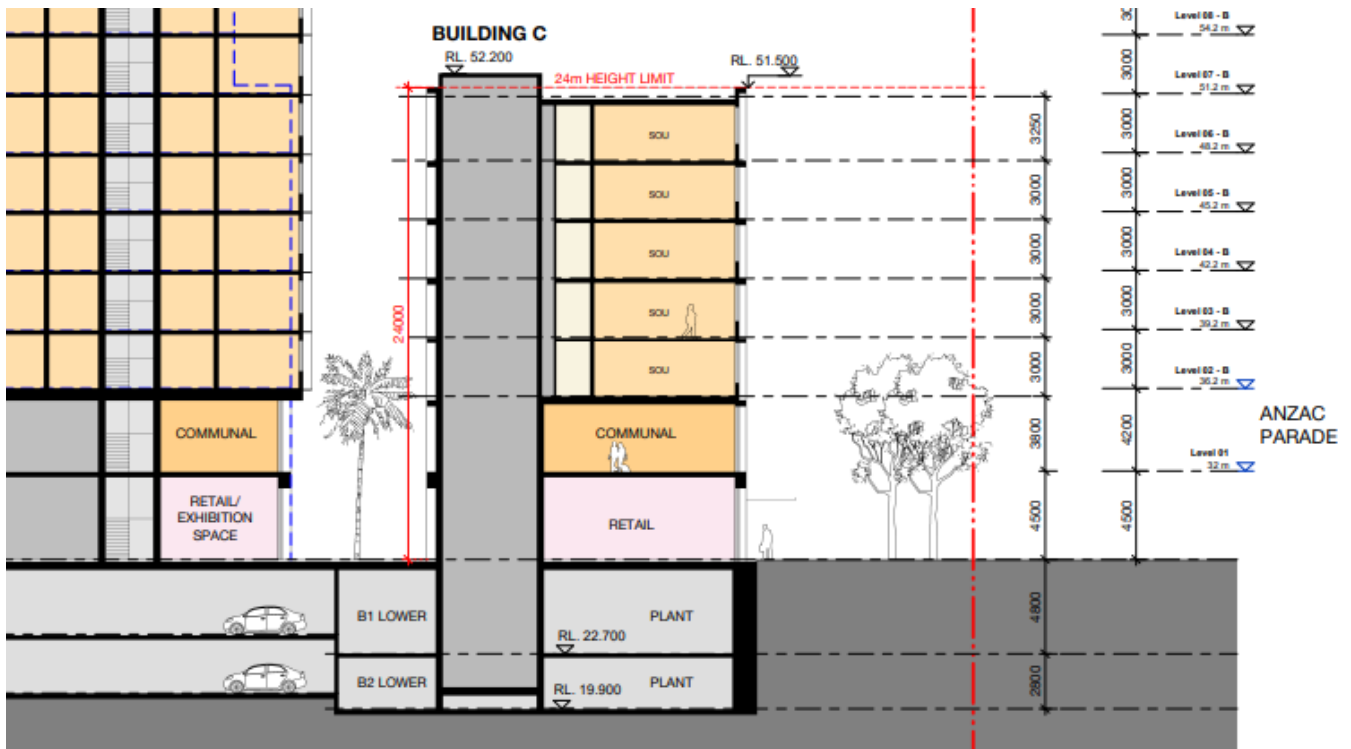


Figure 2 Section showing proposed 0.7m height variation for Building C

Source: Bates Smart

Buildings D and E, located at the rear of the development, have a proposed maximum height of 12.9m, which represents a 0.9m variation (7.5% variation) to the 12m height of buildings development standard that applies along the rear of the site for a distance of 30m from the rear boundary. The elements that exceed the 12m height limit include the parapets (0.25m variation at a height of 12.25m), the top of the slightly pitched roofs (0.45m variation at a height of 12.45m) and lift overruns (0.9m variation at a height of 12.9m). This is illustrated in **Figure 3**. It is noted that Buildings D and E have the same proposed height and design.

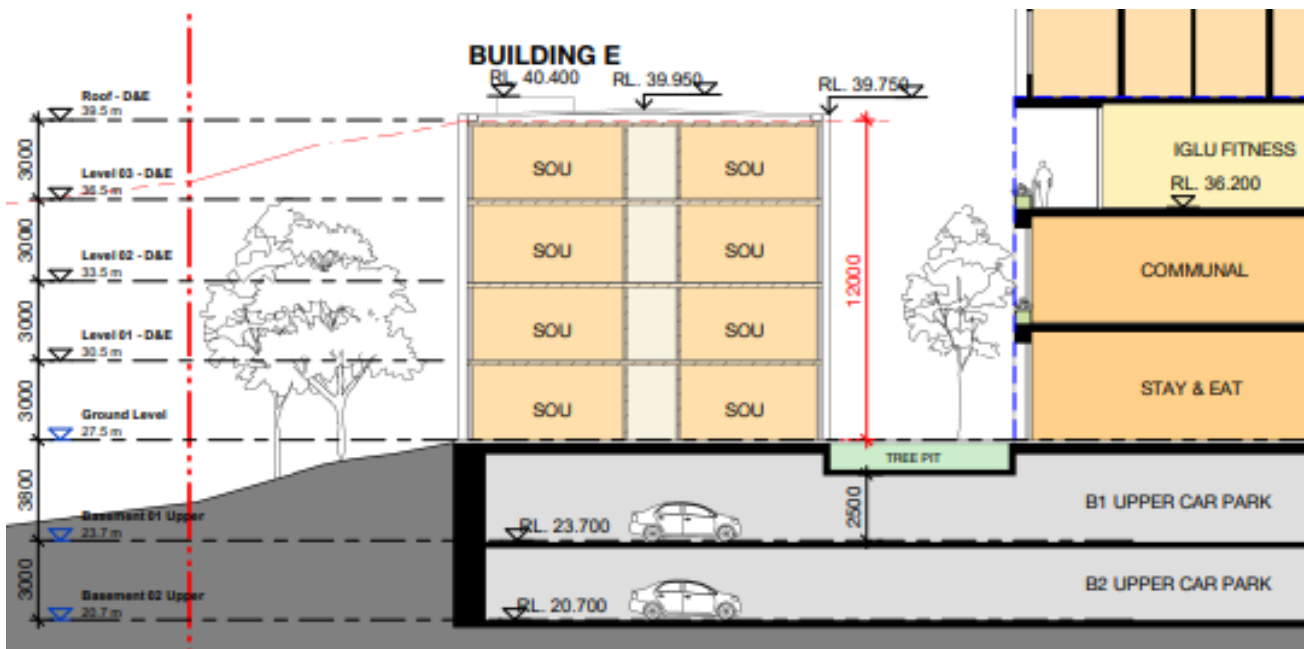


Figure 3 Section showing proposed 0.9m height variation for Buildings D and E

Source: Bates Smart

Buildings A and B both have minor encroachments above the 24m perimeter height towards the Anzac Parade site frontage at Levels 7-15 (Building A) and Levels 7-14 (Building B), as illustrated in **Figures 4** and **5**. The height encroachments are limited to the parapet height at a small portion at the north-eastern corners of Building A and Building B which protrudes forward towards Anzac Parade. The distance by which these buildings encroach into the 24 metre height zone ranges from nil to 4.85m for both Buildings A and B. The height variation of the small portion of

Building A at its parapet is 29.75m. The height variation of the small portion of Building B at its parapet is 22.05m. The majority of these buildings are located within the portion of the site that are not subject to a maximum building height development standard.



Figure 4 Proposed Site Plan (extent of proposed variation in blue) indicating extent of encroachment into 24m height zone in blue

Source: Bates Smart

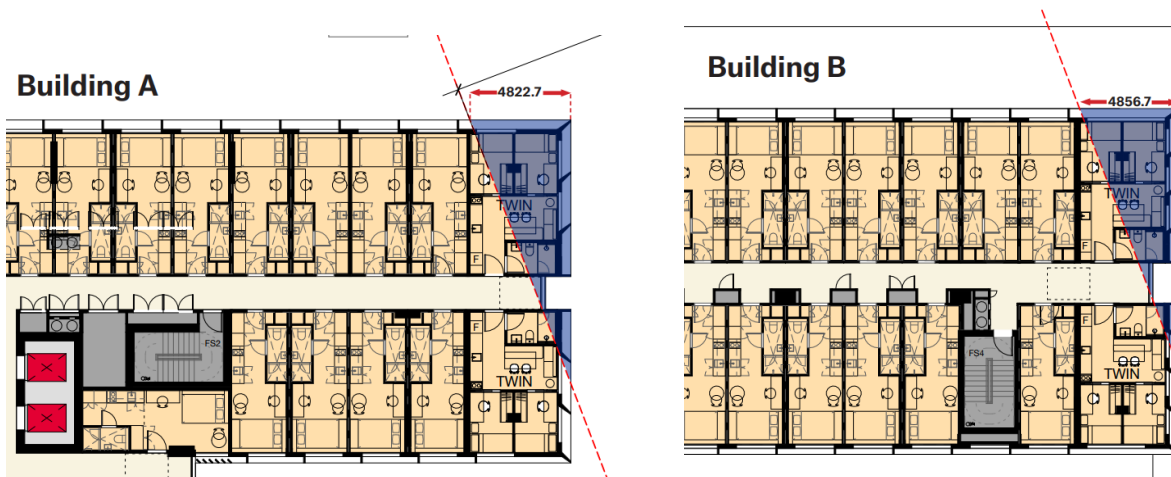


Figure 5 Detailed Buildings A (left) and B (right) floor plans indicating extent of encroachment into 24m height zone in blue

Source: Bates Smart

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Randwick LEP 2012 provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Further, clause 4.6(4)(a) of the Randwick LEP 2012 provides that:

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the Randwick LEP 2012, with respect to the height of buildings development standard, are each addressed below, including with regard to these decisions.

3.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Randwick LEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).

- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method.

3.1.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.3 of the Randwick LEP 2012 are:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that the size and scale of development is compatible with the desired future character of the locality,*
 - (b) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
 - (c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

3.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

Objective (a): to ensure that the size and scale of development is compatible with the desired future character of the locality

Despite the minor height variation proposed for Building C, Building C remains compatible with the desired future character of the Anzac Parade streetscape as it maintains a 24m street wall height, and because the lift overrun cannot be seen the street level of Anzac Parade. This ensures that the scale of Building C is consistent with surrounding buildings such as New College Village and NIDA, and the broader campus edge conditions of UNSW which also have a 24m height limit.

Despite the minor height variation proposed for Buildings D and E, they remain compatible with the desired future character of the lower scale residential development to the west of the site as the 0.25m variation to the wall height and isolated 0.9m variation to the lift overruns are relatively imperceptible from the rear of the properties along Doncaster Avenue. This ensures that a transition to the lower density residential area to the west is provided.

More broadly, the incorporation of low-rise buildings along the edge of the site, will create a more relatable, engaging scale at ground level which will draw people into the site and contribute to the desired future activation of Anzac Parade.

Buildings A and B will be compatible with the desired future character of the locality as the majority of these buildings comply with the development standard, and the small element that protrudes forward to Anzac Parade will not be perceptible and will ensure that these buildings address Anzac Parade in a manner which is more compatible with the desired future character of the Anzac Parade corridor and UNSW localities. Specifically, bringing the eastern edges of these buildings forward allows them to directly address the alignment of University Walk in a perpendicular manner, whilst bringing the towers slightly closer to Anzac Parade which is more consistent and compatible with the street setbacks for towers within the adjacent Kensington and Kingsford centres within the corridor.

Objective (b): to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item

There are two heritage items approximately 80m south west and north of the site (refer to **Figure 6**). The site is not located near a heritage conservation area. As the height variation proposed for Buildings D and E are minor and imperceptible from this distance, and the remaining areas of variation are on the eastern facades and not visible from these heritage items, the proposed parts of this development that are subject to this height control are compatible with the scale and character of these heritage items.



Figure 6 Heritage items near the site (site outlined in red)

Source: Randwick LEP 2012

Objective (c): to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views

Building C achieves this objective, notwithstanding the proposed variation, as the 24m street wall height is consistent with the visual bulk of buildings along Anzac Parade, does not obstruct any key view lines, does not result in any overshadowing of open spaces or surrounding residential dwellings, and has adequate building separation to habitable buildings on adjoining sites to mitigate impacts to privacy. The lift overrun above Building C cannot be seen from the surrounding streetscape and therefore does not affect the visual bulk of Building C nor views from Anzac Parade or surrounding sites. The lift overrun is not a habitable space and therefore does not cause any loss of privacy. Due to the relatively minor 0.7m height variation and siting of the lift overrun, it does not result in any additional overshadowing impact beyond that of the compliant envelope.

Buildings D and E also achieve this objective, notwithstanding the proposed variation as the minor height variation does not materially change the visual bulk of the buildings from that of a fully compliant envelope. The proposed buildings are of a low scale that do not dominate the neighbouring residential dwellings nor result in any perceptible view impacts. As these buildings are sited within shadows cast by taller buildings proposed to the east, the minor height variations will not result in any additional overshadowing impact to neighbouring residential properties. The minor height variations do not provide for any additional habitable spaces and therefore do not generate any loss of privacy. Moreover, the existing line of brush box trees along the western boundary of the site that is proposed to be retained will ensure that the privacy of adjoining residential dwellings is protected.

The elements of Buildings A and B which vary the 24 metre height development standard achieve this objective as they will not result in adverse impacts on the amenity of adjoining and neighbouring land, as the varying elements will not result in any additional impacts to that land in respect of visual bulk, loss of privacy, overshadowing or views beyond those acceptable impacts which are already caused by the elements of these buildings which are compliant.

3.1.3 Conclusion on clause 4.6(3)(a)

In summary, compliance with the building height development standard is considered unreasonable and unnecessary as:

- Building C is compatible with the desired future character and scale of development of the Anzac Parade streetscape by maintaining a 24m street wall height, with the varying elements imperceptible from public views, and the variations of Buildings A and B provide a more appropriate presentation of buildings towards the University Walk and Anzac Parade in keeping with the desired future character of the locality.
- Buildings D and E are compatible with the desired future character and scale of residential development to the west of the site by providing a transition in height generally in keeping with the 12m height limit.
- The site is not located in close proximity to any heritage items, and the proposed elements of variation will not adversely impact on the nearest heritage items as assessed.
- All buildings have visual amenity, privacy and overshadowing outcomes that are appropriate for the site's context and preserve the amenity of adjoining and neighbouring land, and do not result in adverse impacts.

3.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Randwick LEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described under the relevant headings below.

3.2.1 No adverse built form, overshadowing or visual bulk impacts

The lift overrun of Building C does not affect the building's built form nor result in any additional visual bulk. This is because the compliant parapet shields the lift overrun shielded from view from the surrounding street level which is the most sensitive view point.

The minor height variations to Buildings D and E also do not result in unacceptable built form or visual impacts. The 0.25m variation to the parapet height is realistically imperceptible from surrounding sites while the highest point of the slightly pitched roof cannot be seen from the surrounding ground level. Moreover, the lift overruns represent a small part of the building footprint and do not add any significant built form nor dominate any views of the buildings.

The proposed varying elements to Buildings A and B will not result in any additional adverse environmental impacts beyond those already caused (and assessed as being acceptable as outlined in the SEE) by the compliant elements of these proposed buildings. As the encroaching elements are located to the north of other compliant elements of the proposed buildings, the encroaching elements will not result in adverse shadowing impacts to adjoining land beyond those already caused (and assessed as being acceptable as outlined in the SEE) by the compliant elements of the proposed buildings between 9am and 3pm at the winter solstice. The visual bulk of the proposed buildings will not be increased by the encroaching elements, and will in fact be improved compared to a wholly compliant scheme as a result of the non-compliance by orienting the proposed buildings squarely towards the main public view axis, being University Walk.

As discussed above in Section 3.1.2, the proposed height variations will not result in any additional overshadowing or amenity impacts on neighbouring sites.

Therefore, the appropriate built form and visual bulk outcomes justify the minor contravention of the height of buildings development standard.

3.2.2 Consistency with surrounding streetscape context

As discussed in the previous section, both Building C and Buildings D and E are compatible with their respective streetscape contexts. Building C maintains a 24m street wall height which is consistent with the remainder of the Anzac Parade streetscape. This ensures that the scale of Building C is consistent with surrounding buildings such as New College Village and NIDA, and the broader campus edge conditions of UNSW which also have a 24m height limit.

The lower scale of Buildings D and E, which generally aligns with the 12m height of development envisaged by Council's planning controls, ensures that a transition in height and scale of development is provided towards the residential dwelling houses to the west of the site. Therefore, the consistency of Buildings C, D and E with their surrounding streetscape justify the minor contravention of the height of buildings development standard.

In directly orienting these buildings perpendicular to the main public view corridor, being University Walk, the proposed varying elements will provide an improved urban design outcome that is more appropriately integrated into the local urban framework and key views. The perpendicular address to University Walk provides for a built form which is more in keeping with the direct linear nature of this viewpoint, which is used by thousands of visitors to the precinct on a daily basis and which is a significantly more prominent pedestrian route than the Anzac Parade footpaths. Bringing the proposed towers slightly towards Anzac Parade is also considered to be more appropriate within the urban context of the Anzac Parade movement corridor, where towers in the adjoining Kingsford and Kensington local centres are typically set back from the street wall edge by between 4 and 6.5 metres.

3.2.3 Provision of equitable access

The maximum extent of the proposed height variations to Buildings C, D and E are due to the provision of lifts within the proposed buildings. Provision of lifts is required to meet accessibility and inclusive design requirements, as well as efficient access to units within the development.

3.2.4 Maximisation of student accommodation provision

The proposed heights of Buildings A, B, C, D and E allow for the provision of student accommodation to be maximised without causing adverse built form, visual and amenity impacts to surrounding sites. While each of these buildings could be reduced in height by one level, this would result in a reduction of over 50 student accommodation units. Considering that the *Greater Sydney Regional Plan – A Metropolis of three Cities* and the *Eastern City District Plan* explicitly identify the growing need and demand for student accommodation for students, especially given the growth in the international tertiary education sector, which is the largest export service industry in NSW, and establish the direction to provide student accommodation dwellings to contribute to diverse housing for students in a health and education precinct, a scheme which does not maximise provision of student accommodation would be inconsistent with the State's strategic planning goals.

3.2.5 Consistency with the objectives of the EP&A Act

In *Initial Action*, the Court stated that the phrase "*environmental planning grounds*" is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 1** we consider the proposal is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Consistency with the objectives of the EP&A Act

Object	Comment
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources</i>	The proposed height variation will promote the social and economic welfare of future residents by delivering equitably accessible student accommodation that contributes to diverse housing for students in a health and education precinct and meets the growing need and demand for student accommodation for students, especially given the growth in the international tertiary education sector, which is the largest export service industry in NSW.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	The proposed building height variations will facilitate the provision of student accommodation to meet the needs of students and facilitate the growth of the international education export sector, and will have no negative impact on environmental and social considerations and will support the economic health of Sydney.

Object	Comment
<i>(c) to promote the orderly and economic use and development of land</i>	<p>The site is strategically located, in close proximity to existing bus and light rail services, which will be frequently used by students living in the proposed development. Strict compliance with the maximum building height control would be a lost opportunity to maximise the provision of student accommodation on a key gateway site. Reduction of the buildings by one floor to comply with the height standard, would represent a lost opportunity to maximise additional student accommodation units on a site that does not have a statutory floor space ratio constraint. or additional dwellings in the Sydney housing market.</p> <p>The proposal with a variation to the maximum building height control is a balanced and orderly design outcome that responds to the unique characteristics of the site, its surrounding streetscape contexts and does not result in an over intensification of land.</p>
<i>(d) to promote the delivery and maintenance of affordable housing</i>	While the proposed development is not strictly considered to be affordable housing, the proposed height variation will allow the provision of student accommodation units that are affordable and provide added value to students as they are specifically designed to meet a wide range of their living and social needs.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	The proposal, inclusive of height variation. will not have any impact on threatened species or ecological communities.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</i>	As discussed in Section 3.1.2, the proposal, inclusive of height variation, will not impact built or cultural heritage.
<i>(g) to promote good design and amenity of the built environment</i>	The proposal will promote good design and amenity of the built environment by exhibiting a high-quality design which adds to the architectural diversity and interest along the Anzac Parade corridor. of Darlinghurst. The proposed height variation remains generally in accordance with the prevailing street wall heights along Anzac Parade and the scale of buildings along the western edge of the UNSW campus.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	The proposal, inclusive of height variation, will comply with the relevant provisions of the BCA through allowing equitable access.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i>	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development, and implements the strategic planning priorities for student accommodation and educational establishments in Randwick.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment</i>	The proposed development and this Clause 4.6 variation will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

3.2.6 Conclusion on clause 4.6(3)(b)

In conclusion, there are sufficient environmental planning grounds to justify contravening the development standard as:

- The proposed height variation will not result in any adverse built form, visual or amenity impacts as the elements which result in the height variation are either shielded from view from ground level, minor in nature or imperceptible from sensitive receivers, and in the case of Buildings A and B will result in a better urban design response to the University Walk urban axis.
- The proposal, inclusive of the height variation will be consistent and compatible with the Anzac Parade streetscape and the transition to the lower scale residential dwellings to the west.

- The additional height supports equitable access and the maximisation of student accommodation for provision to meet the strategic planning needs of the Randwick and NSW.
- The proposed variation maintains the development's consistency with the objectives of the EP&A Act.

3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is therefore in the public interest as it is consistent with the objectives of the development standard and the objectives of the zone.

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190.
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21.
- *Raassis v Randwick City Council* [2019] NSWLEC 1040.
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648.
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241.
- *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147.

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted, the test of "consistency" is less onerous than that of "achievement".

3.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in section 3.1.2 of this report.

3.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the SP2 Infrastructure Zone, as demonstrated below.

Objective (a): To provide for infrastructure and related uses

The proposed development provides student accommodation and educational infrastructure to support the operation of UNSW and the students which attend the university.

Objective (b): To prevent development that is not compatible with or that may detract from the provision of infrastructure

The proposed development does not propose any uses that detract from the purposes of educational infrastructure.

Objective (c): To facilitate development that will not adversely affect the amenity of nearby and adjoining development

As discussed above, the proposed development does not adversely affect the amenity of nearby and adjoining development, including considerations such as visual amenity, overshadowing and privacy.

Objective (d): To protect and provide for land used for community purposes

The ground plane of the proposed development will provide retail, food and beverage offerings and diverse landscaped spaces that will be accessible to both the university and broader community.

3.3.3 Overall public interest

As the proposed development is consistent with the objects of the development standard and SP2 Infrastructure Zone, does not result in any unacceptable environmental impacts, and meets the growing need for student accommodation to cater for international students, the proposed development is in the public interest.

3.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

3.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the with the *Greater Sydney Regional Plan – A Metropolis of three Cities* and the *Eastern City District Plan* in that it:

- The project directly addresses the growing need and demand for student accommodation for students, especially given the growth in the international tertiary education sector, which is the largest export service industry in NSW.
- Provides 953 student accommodation dwellings to contribute to diverse housing for students in a health and education precinct.
- Maximises the value of investment in the CBD & South-East Light rail through its integration with new student housing and education.

3.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As outlined in **Section 3.2** above, there are sufficient environmental planning grounds to warrant variation of the development standard and it is considered to be in the public interest for the variation to be supported in this case. It is also considered that there is no public benefit in maintaining the numerical building height development standard in this instance. In fact, strictly adhering to the maximum height development standard would result in a worse public outcome for the site and surrounding community, given that it would necessitate deletion of over 50 student accommodation dwellings on a site that is not constrained by floor space ratio controls. Notably, this would place higher stress on local rental accommodation supply to the detriment of other members of the community who are in need of rental accommodation. In addition, requiring Buildings A and B to strictly comply with the alignment of the 24m height zone towards Anzac Parade would provide a poorer urban design outcome by orienting the eastern façade of buildings away from the significant University Walk axis.

Given this, as well as the justification provided throughout this Clause 4.6 variation request, maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this detracting and underutilised site, and would unnecessarily encumber the various community benefits this development brings.

3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration.

4.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the Randwick LEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height of buildings development standard, the proposed development:

- Achieves the objectives of clause 4.3 of the Randwick LEP 2012 in that:
 - The minor height variation does not materially affect the development's compatibility with the desired future character of the Anzac Parade streetscape as it maintains a 24m street wall height and continues to provide a height transition to the west.
 - The lift overruns and slight roof pitch (of Buildings D and E) are imperceptible from ground level and, therefore do not result in any additional visual bulk, and do not create additional overshadowing or privacy impacts.
 - The encroachment of Buildings A and B into the 24m street wall height zone will not result in any adverse environmental impacts and will result in an improved urban design response that is more compatible with the desired future character of the Randwick Health and Education Precinct and the Anzac Parade movement corridor.
- Is compatible with the desired future character of the Anzac Parade streetscape as it maintains a 24m street wall height and continues to provide a height transition to the west.
- Will result in an appropriate built form, scale and massing outcome.
- Is consistent with the relevant objects of the EP&A Act, promoting the orderly and efficient use of land.
- Is consistent with the objectives of the SP2 Infrastructure zone in that it facilitates the provision of much needed student accommodation and does not adversely affect the amenity of nearby and adjoining development.
- Will address the growing need and demand for student accommodation for students, especially given the growth in the international tertiary education sector, which is the largest export service industry in NSW.
- Will provide 953 student accommodation beds to contribute to diverse housing for students in a health and education precinct.
- Will maximise the value of investment in the CBD & South-East Light rail through its integration with new student housing and education.
- Is in the public interest in light of the numerous positive social, ecological, design and economic impacts it will deliver for the Site.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Randwick LEP 2012.